DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

(Head notes prepared by M. P. Burks, State Reporter.)

PIEDMONT BANK AND OTHERS v. HATCHER AND OTHERS.—Decided at Richmond, January 14, 1897.—*Buchanan*, J:

1. CHANCERY PLEADING—*Denial under oath of an endorsement—Burden of proof.* Where the answer of a maker of a note denies that the payee endorsed it to the complainant as alleged in the latter's bill, and the denial is supported by affidavit, as required by sec. 3279 of the Code, the burden of proof is thrown upon the complainant to show such endorsement, and in default thereof his bill should be dismissed.

2. FRAUD—*Evidence of other like frauds admissible.* Where fraud in the sale and purchase of property is in issue, evidence of other frauds of like character, committed by the same party, at or about the same time, is admissible. Large latitude is always given to the admission of evidence where the charge is fraud.

3. NEGOTIABLE PAPER—*Fraud or illegality in its inception—Burden of proof on holder to show bona fides, &c.* If the maker of a negotiable note, or other party primarily bound for its payment, or bound by the original consideration, proves that it was obtained by fraud or illegality in its inception, or if the circumstances raise a strong suspicion of fraud or illegality, the holder of the note must show that he obtained it *bona fide* for value in the usual course of business before maturity and under circumstances which create no presumption that he knew of the facts which impeach its validity.

NUNNALLY AND OTHERS v. STRAUSS AND OTHERS.—Decided at Richmond, January 28, 1897.—*Harrison*, J.—*Keith*, P., and *Buchanan*, J., dissenting:

1. INSOLVENT CORPORATIONS—*Equity jurisdiction at suit of simple contract creditor.* A court of equity has jurisdiction to entertain the suit of a simple contract creditor who has no lien, brought for the purpose of administering the assets of an insolvent and abandoned corporation. *Finney* v. *Bennett*, 27 Gratt. 365, approved.

2. MULTIFARIOUSNESS. Whether or not a bill is multifarious depends upon its allegations and not upon its prayer. Where the plaintiffs have a common interest in the subject-matter of the suit, the litigation grows out of one and the same transaction, the defendants have a co-extensive interest and liability, and can suffer no possible disadvantage from the frame of the bill, and a multiplicity of suits will be avoided, the bill cannot be said to be multifarious.

WESTERN UNION TELEGRAPH CO. v. POWELL.—Decided at Richmond, February 4, 1897.—*Buchanan*, J:

1. CONSTITUTIONAL LAW—*Sections 1291 and 1292 of the Code—Telegraph companies.* Sections 1291 and 1292 of the Code regulating the sending and delivery

of telegraphic messages, interstate and domestic, are not in conflict with the commerce clause of the Constitution of the United States, but are constitutional.

2. CONSTITUTIONAL LAW—*Jurisdiction of Court of Appeals—Amount in controversy.* Where the jurisdiction of the Court of Appeals has been invoked in good faith to determine the constitutionality of a law, a writ of error will not be dismissed as improvidently awarded merely because after it was awarded but before hearing the law has been held to be constitutional in some other case. And having jurisdiction on one ground, it has it for all purposes, although the amount involved is less than $500.

3. PLEADING—*Action for a penalty—What declaration must state—Telegraph company.* In an action upon a penal statute which does not authorize the plaintiff to declare generally, it is material that the offence or act charged to have been committed or omitted by the defendant should appear to have been within the provisions of the statute, and all the circumstances necessary to support the action should be stated in the declaration. In the case at bar, under a statute imposing a penalty on a telegraph company for failure to deliver promptly a dispatch, upon its arrival, the declaration is fatally defective in that it fails to aver that the dispatch arrived at the point to which it was to be transmitted.

4. APPELLATE COURT—*Certificate of evidence or facts.* Since the Code of 1887 went into effect, a case at law, heard and determined by the court, as well as a case tried by a jury, may be heard in the appellate court either upon a certificate of facts, or of the evidence. In either case the court should certify the facts when it can do so, but, if it be unable or unwilling to certify the facts because the evidence is conflicting or complicated, or of doubtful credibility, it should certify the evidence.

5. APPELLATE COURT—*Objections to evidence for the first time.* As a rule, objections to evidence cannot be made for the first time in the appellate court, and certainly not where the objection is that the evidence is not the best evidence of the fact which it was offered to prove.

6. TELEGRAPH COMPANIES—*Restricting liability—Endorsement on message blanks.* A telegraph company, in the absence of a contract restricting its liability for services which it undertakes to render, cannot rely upon endorsements made on its message blanks to restrict such liability, when the plaintiff neither signed the blank nor authorized any one to do so for him.

CITY OF NORFOLK v. POLLARD.—Decided at Richmond, February 4, 1897.—*Riely*, J:

1. COURT OF APPEALS—*Errors of trial court—Motion for new trial.* Unless the record shows that a motion for a new trial was made in the court below and overruled and that its ruling was excepted to, the Court of Appeals will not review the judgment, but it is not necessary that a formal bill of exceptions be taken to the ruling of the court. In the case at bar it sufficiently appears that exception was taken to the action of the court in overruling the motion for a new trial, as the record shows that a motion for a new trial was made and overruled; that the defendant excepted to "sundry rulings and opinions of the court given on said trial and to the judgment entered therein;" and that there were but three rulings and